

Title: Police, Crime, Sentencing and Courts Bill – Driving Offences Impact Assessment IA No: MoJ047/2019 RPC Reference No: N/A Lead department or agency: Ministry of Justice Other departments or agencies: N/A	Impact Assessment (IA)			
	Date: 10/12/2020			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
	Contact for enquiries: katie.dougal@justice.gov.uk			
Summary: Intervention and Options				RPC Opinion: N/A

Cost of Preferred (or more likely) Option (in 2020/21 prices)			
Total Net Present Social Value	Business Net Present Value	Net Cost to Business per Year	Business Impact Target Status
-£96.7m	N/A	N/A	Not a regulatory provision

What is the problem under consideration? Why is government action or intervention necessary?

Following a review in 2014 the Ministry of Justice committed to changing the law on death by dangerous driving while a subsequent consultation in 2016 considered wider reform of driving offences and penalties relating to causing death or serious injury. The government has concluded that: the current maximum penalties for causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs and current sentencing practice are too lenient and should be on a par with the sentencing for manslaughter offences; and there is a gap in the law relating to careless driving that results in serious injury as no current offence adequately captures the harm done through this behaviour. The measures in this impact assessment will ensure sure that the penalties available to the courts for such offences are proportionate and reflect the seriousness of the offences committed and introduce a new offence to deal with the gap in the law. Government intervention is required as changes to maximum penalties and the creation of a new offence requires primary legislation.

What are the policy objectives of the action or intervention and the intended effects?

The policy objective is to make sure that the options available to the courts to sentence drivers who cause death by dangerous driving, death by careless driving when under the influence of drink or drugs or serious injury by careless driving are proportionate and reflect the seriousness and level of harm of the offences committed.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The following options are considered:

Option 0 - Do nothing.

Continue to rely on existing offences under current road traffic legislation to provide the courts with powers to punish offenders who kill or cause serious injury on the roads.

Option 1 – Introduce legislative measures A-C for driving offences and penalties relating to causing death or serious injury:

- A. increase the maximum penalty for the offence of causing death by dangerous driving to life imprisonment (currently 14 years);
- B. increase the maximum penalty for the offence of causing death by careless driving when under the influence of drink or drugs to life imprisonment (currently 14 years); and
- C. create a new offence of causing serious injury by careless driving (maximum 2 years' imprisonment)

The preferred option is to implement measures A-C, at Option 1, as this best meets the policy objectives.

Will the policy be reviewed? It will be reviewed If applicable, set review date: No set date						
Does implementation go beyond minimum EU requirements?			N/A			
Is this measure likely to impact on international trade and investment?			No			
Are any of these organisations in scope?			Micro No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A		Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:  Date: 08/03/2021

Summary: Analysis & Evidence

Policy Option 1

Description: Introduce legislative measures A-C for driving offences and penalties relating to causing death or serious injury

FULL ECONOMIC ASSESSMENT

Price Base Year 2020-21	PV Base Year 2020-21	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£95.4m	High: -£98.1m	Best Estimate: -£96.8m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual ¹ (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£20.4m	£11.4m	£95.5m
High	£22.2m	£12.1m	£98.2m
Best	£21.3m	£11.8m	£96.9m

Description and scale of key monetised costs by 'main affected groups'

The estimated monetised costs of measures A-C to the Criminal Justice System (CJS) are expected to be as follows: around £5.7m prison costs² per annum based on around 1,300 offenders per annum receiving longer sentences; £3.6m per annum to the courts and tribunals service, £1.4m per annum to the probation services, and £1.2m per annum for legal aid services. In addition, there will be one off costs of £21.3m for prison place construction.

Other key non-monetised costs by 'main affected groups'

There may be costs to the National Probation Service (NPS) and Criminal Justice Social Work (CJSW) in Scotland for measure C, due to offenders receiving community orders where previously they would have received a fine. Prison construction costs have not been calculated for Scotland as the annual population increase is estimated to be below 5 places; if additional prison estate is required in Scotland, this could incur significant one-off costs. There may be one-off transitional costs due to the preparation of new training or guidance material for courts services in England, Wales and Scotland and the Crown Prosecution Service (CPS) and the Crown Office and Procurator Fiscal Service (COPFS).

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	£0.1m	£0.1m
High	N/A	£0.1m	£0.1m
Best	N/A	£0.1m	£0.1m

Description and scale of key monetised benefits by 'main affected groups':

The total savings to the NPS are estimated to be around £0.1m per annum, due to a reduction in offenders on licence during the appraisal period.

Other key non-monetised benefits by 'main affected groups'

Increased penalties and the new offence could improve public (and victim) confidence in the CJS. Furthermore, the changes could lead to further benefits for society from potential reduction in dangerous or careless driving and safety for road users due to the deterrent effect of increased penalties, for which the evidence is mixed.

Key assumptions/sensitivities/risks

Discount rate (%): 3.5%

- (i) Past sentencing volumes have been used as a predictor of future volumes, this may vary in the future meaning impacts may be over- or under-estimates.
- (ii) Increasing maximum penalties would only impact cases currently receiving custodial sentences close to the existing maximum of 14 years.
- (iii) For measure C, we assume a transfer of cases from the existing offence of careless driving to the new offence of causing serious injury by careless driving only.
- (iv) Additional prison estate is required to accommodate the increased prison caseload. Prison costs are based on average cost per prisoner of £44,640 per annum (£43,003 in Scotland), with construction costing £250k per place.
- (v) Optimism bias of 20% applied to all costs and benefits and presented in 20/21 prices.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m: N/A
Costs: N/A	Benefits: N/A	Net: N/A	

¹ This is based on a steady state of 2029/30 for the combined measures.

² Costs falling to either HM Prison Service or the Scottish Prison Service.

Evidence Base (for summary sheets)

A. Background

1. Various road traffic offences are set out in the Road Traffic Act 1988 and the current maximum penalties for various road traffic offences are specified in the Road Traffic Offenders Act 1988.
2. At present, the current maximum penalty for causing death by dangerous driving is 14 years' imprisonment. In 2019, over 150 people were sentenced for causing death by dangerous driving and around 95% of offenders received an immediate custodial sentence, of which over 15 received a sentence over 10 years in length, suggesting that over a tenth of offenders are already being sentenced near the maximum threshold.
3. There is concern from victims' families, campaign groups, MPs and the government that this maximum sentence is not severe enough and does not adequately reflect the consequences of the offender's behaviour. It has been suggested, instead, that the maximum penalty for this offence should be the same as that for manslaughter (life imprisonment).
4. Increasing the maximum penalty for causing death by dangerous driving offence would then raise the question of whether the maximum penalty for the offence of causing death by careless driving when under the influence of drink or drugs, which also has a maximum penalty of 14 years' imprisonment, should be increased in line or whether a distinction in the maximum penalties is justified by a difference in the level of culpability of the driver.
5. Currently there are two driving offences of causing serious injury. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 created the offence of causing serious injury by dangerous driving which has a maximum penalty of 5 years' imprisonment. The Criminal Justice and Courts Act 2015 created the offence of causing serious injury when driving disqualified with a maximum penalty of 4 years' imprisonment. The creation of these new offences for dangerous and disqualified driving leaves a gap in the law relating to careless driving that results in serious injury.
6. The current maximum penalty for careless driving is an unlimited fine but in some cases the harm caused by the driving can result in serious injury. A maximum penalty for a new offence of causing serious injury by careless driving would have to balance the high level of harm caused and low culpability of the driver whilst remaining consistent with the existing maximum penalties for other related offences.
7. In 2016, the government published a consultation on driving offences and penalties relating to causing death or serious injury. This received over 9,000 responses which have been considered in the drafting of the Police, Crime, Sentencing and Courts Bill. Overall the responses to the consultation demonstrated considerable support for the government's proposals to create a new offence of causing serious injury by careless driving and to increase the maximum penalties for the offences of causing death by dangerous driving and causing death by careless driving under the influence of drink or drugs from 14 years to life imprisonment¹. This impact Assessment analyses the impacts of these legislative changes.
8. The current offences and the associated penalties for motoring offences relating to causing death or serious injury by dangerous or careless driving, driving while uninsured, unlicensed or under the influence of drink or drugs are described in table one. These offences and penalties are those set out in the Road Traffic Act 1988 and Road Traffic Offenders Act 1988 respectively, and a summary can be found in Annex A.

B. Policy Rationale and Objectives

9. The conventional economic approach to government intervention is based on efficiency or equity arguments. The government may consider intervening if there are strong enough failures in the ways

¹ <https://consult.justice.gov.uk/digital-communications/driving-offences-causing-death-or-serious-injury/>

that markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases, the proposed intervention should avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and redistribution reasons (e.g. to reallocate goods and services to the more needy group in society).

10. The rationale for government intervention in this instance is equity: a re-consideration of the current law is required to ensure that offenders are both consistently and fairly dealt with. In particular, the government wants to make sure that the penalties available to the courts are proportionate and reflect the seriousness of the offences committed and that appropriate offences are available.
11. The associated policy objectives are to make sure that the options available to the courts to sentence drivers who cause death or serious injury on the roads are proportionate, reflect the seriousness of the offences committed and provide surviving victims and their families with a sense that justice has been done.

C. Affected Stakeholder Groups, Organisations and Sectors

12. The options assessed in this IA will apply in England and Wales and in Scotland. Therefore, the groups most likely to be affected by these options are listed below.
13. The affected stakeholders in England and Wales include the following:
 - Victims of road traffic incidents and their families
 - Offenders / those committing these crimes
 - Her Majesty's Courts and Tribunals Service (HMCTS)
 - Her Majesty's Prison and Probation Service (HMPPS), including the National Probation Service (NPS)
 - Legal Aid Agency (LAA)
 - The Crown Prosecution Service (CPS)
 - Parole Board for England and Wales
 - Sentencing Council
 - Electronic Monitoring Service
 - HM Treasury (HMT)
 - The public
14. The affected stakeholders in Scotland include the following:
 - Victims of road traffic incidents and their families
 - Offenders / those committing these crimes
 - Scottish Courts and Tribunals Service (SCTS)
 - Scottish Prison Service (SPS)
 - Criminal Justice Social Work (CJSW)
 - Scottish Legal Aid Board (SLAB)
 - Crown Office and Procurator Fiscal Service (COPFS)
 - Parole Board for Scotland
 - Scottish Sentencing Council
 - The public

D. Description of options considered

15. Following consideration of responses to the consultation and to meet the policy objectives, the following options are considered in this IA:
 - **Option 0/do nothing:** Continue to rely on existing offences under current road traffic legislation to provide the courts with powers to punish offenders who kill or cause serious injury on the roads.
 - **Option 1: Introduce legislative measures A-C** for driving offences and penalties relating to causing death or serious injury:

Increase the maximum penalty for the offence of causing death by dangerous driving to life imprisonment (currently 14 years);
Increase the maximum penalty for the offence of causing death by careless driving when under the influence of drink or drugs to life imprisonment (currently 14 years);
Create a new offence of causing serious injury by careless driving (max penalty 2 years imprisonment).

16. Option 1 is the preferred option as it best meets the government's policy objectives.

Option 0

17. Under this option the current sentencing arrangements for driving offences would remain unchanged and a new offence would not be created. This would leave unaddressed concerns about the existing framework and would leave a gap in the existing sentencing regime.

Option 1

18. Under Option 1 the gap in the law with respect to causing serious injury by careless driving would be addressed by changes to legislation anticipated to come into effect in autumn 2021. Likewise, increases to the maximum penalty for causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs would come into effect in Autumn 2021.

E. Cost and Benefit Analysis

19. This IA follows the procedures and criteria set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.

20. Where possible, this IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in England, Wales and Scotland with the aim of understanding what the overall impact on society might be from the proposals under consideration. IAs place a strong focus on the monetisation of costs and benefits. There are often, however, important impacts that cannot sensibly be monetised. These might be impacts on certain groups of society, positive or negative. Impacts in this IA are therefore interpreted broadly, to include both monetised and non-monetised costs and benefits, with due weight given to those that are non-monetisable.

21. The costs and benefits of each proposal are compared to Option 0, the do nothing or 'baseline' case. As the 'baseline' option is compared to itself, the costs and benefits are necessarily zero, as is its Net Present Value (NPV).

Methodology

22. All costs in this IA are given in 2020-21 prices with a 20% optimism bias applied and have been rounded to the nearest £100,000, unless stated otherwise.

23. The implementation date of the policy has been modelled as Autumn 2021 (this may change but any change would not have a material impact on our analysis). All annual costs are presented in steady state, unless otherwise stated. Steady state occurs in Year 2 of policy implementation (2022/23) for measure C and falls outside of the appraisal period for measure A because of the long custodial sentences involved (greater than 10 years). The impacts of measure B are considered negligible for reasons detailed in this document and thus no steady state costs are quantified.

24. It is assumed that any additional prison places will incur an annual running cost of £44,460^{2,3} in England and Wales. This is the average cost of providing a prison place for a year based on overall resource expenditure and includes staffing and estate costs, it does not cover contracted out costs or capital. In Scotland, additional prison places will incur an annual running cost of £43,003 (2020-21 prices), from the *Costs of the Criminal Justice System in Scotland*⁴.

² In 2020-21 prices and without optimism bias.

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/841948/costs-per-place-costs-per-prisoner-2019-2020.pdf

⁴ <https://www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/Publications/costcrimjustscot/costcrimjustdataset>

25. It is assumed that, in England and Wales, any increase in the prison population will require the construction of additional prison capacity through prison building at a cost of £250,000 per place. The projected impact on prison population in Scotland is small (around 5 across all measures), as such construction costs for Scotland have not been quantified.
26. New prison capacity can be provided in numerous ways, so construction costs are based on the cost per place of a combination of provisions including new builds and refurbishments and is based on the nominal costs of each project, using a modelled profile of build. It should be noted that these costs are indicative and will vary depending on the type of estate being built and whether any increase in prison population could be accommodated in existing estate.
27. The costs and benefits of measures A and B in Option 1 are assessed using two scenarios; low and high, with the best estimate the average of the two. This is to reflect the uncertainty around the impact of the policy change on average custodial sentence length (ACSL) for measure A and B. We assume that the policy change will only affect the custodial sentence lengths of the most serious offenders only (those sentenced to at least two-thirds of the maximum custodial penalty of 14 years, which is equivalent to 9 years and 4 months). We only expect the most serious cases to be impacted for two reasons. Firstly, sentencing outcomes show a heavy concentration at the lower end, with few offenders receiving penalties close to the maximum sentence. Secondly, the existing maximum penalty (14 years) is already serious. The scenarios are as follows:
- Low scenario:** 25% increase in custodial sentence lengths for those sentenced to 9 years and 4 months or more, for causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs and 9.5% of careless driving offences will now be prosecuted under serious injury caused by careless driving
- Central scenario:** 37.5% increase in custodial sentence lengths for those sentenced to 9 years and 4 months or more, for causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs and 9.5% of careless driving offences will now be prosecuted under serious injury caused by careless driving
- High scenario:** 50% increase in custodial sentence lengths for those sentenced to 9 years and 4 months or more, for causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs and 9.5% of careless driving offences will now be prosecuted under serious injury caused by careless driving
28. In England and Wales between 2015-2019, there were an annual average of 8 offenders who received a sentence of more than 9 years 4 months for the offences of causing death by dangerous driving or for causing death by careless driving when under the influence of drink or drugs, and their ACSL was 132 months⁵ (11 years). In the lower estimate we would expect an ACSL for this subset of 165 months (13 years 9 months) and 198 months (16 years 6 months) in the higher scenario; these correspond to increases of 33 months (2 years 9 months) and 66 months (5 years 6 months) respectively.
29. In England and Wales, the average annual incidence of careless driving proceedings from 2015-19 was 13,500 and we estimate 1,150 annual prosecutions for the proposed offence. This assumes that the ratio between the number of prosecutions for serious injury by careless driving and careless driving will be the same as the ratio between the number of prosecutions for serious injury by dangerous driving and dangerous driving (i.e. roughly 10% of dangerous driving offences result in serious injury so we assume around 10% of careless driving offences will result in serious injury and be prosecuted under the new offence).
30. In Scotland we estimate 155 proceedings per annum for the offence, using the same approach. We assume an ACSL of 5.6 months in England and Wales and an ACSL of 7 months in Scotland. This is based on the ACSL for the more serious death by careless driving offence, adjusted for the relative harm (see assumptions and risks for more details).

⁵ MoJ internal analysis

31. For ease of exposition, we present the impacts of measures A-C separately.

Measure A: Increase the maximum penalty for the offence of causing death by dangerous driving to life imprisonment (currently 14 years)

Costs of Measure A

Monetised Costs

HM Prison Service, Scottish Prison Service

32. We estimate that steady state will be reached in 2029/30 for the low scenario, with an additional 15 prison places required. For the high scenario we anticipate steady state being reached in 2030/31 with an additional 30 prison places required. Steady state prison running costs are estimated to be between £0.7m to £1.5m per annum, and construction costs around £3.0m to £5.7m, with a best estimate of £1.1m for prison running costs and £4.4m for construction costs.
33. We do not expect to incur costs against the counterfactual until 2025/26 for both the lower estimate and the higher estimate (excluding construction costs) given that any impacts would only be realised after offenders have served the time they would have been sentenced to without this policy change. Our estimates presume offenders will on average spend two-thirds of their sentence in prison before release on supervision in the community.
34. In Scotland, between 2015-16 and 2018-19 there was only a single sentence above the thresholds seen in table 2⁶ and we therefore assume there will be minimal impact on the prison service from this measure.

Non-monetised Costs

National Probation Service

35. It is likely that there will be some costs to the NPS due to offenders spending longer on probation as a result of an increase in sentence length. This is particularly the case if offenders are sentenced to life imprisonment, since, if and when they are released, they would spend the rest of their life on licence. However, due to the length of the ACSL, these costs fall outside of the 10-year appraisal period for this IA. As we predict only a small number of offenders to be affected, we do not expect the additional costs, when steady state is reached, to be substantial.

Criminal Justice Social Work

36. If offenders in Scotland were to receive longer custodial sentences, then there are likely to be small costs to CJSW, delivered by Local Authorities, due to offenders spending longer on probation. However, even if a small number of offenders were affected by the policy change, we would expect these costs to be low.

Parole Board for England & Wales, Parole Board for Scotland

37. Offenders sentenced to life imprisonment have Parole Board hearings once they have reached the minimum period of imprisonment imposed (the tariff). Therefore, if an offender received a life sentence there would be a resource impact on the Parole Board for England and Wales and the Parole Board for Scotland. However, we predict only a small number of offenders to be affected, hence the costs to the Parole Board for England and Wales and Parole Board for Scotland have not been modelled.

HM Courts & Tribunals Service, Scottish Courts and Tribunals Service, Crown Prosecution Service, Crown Office and Procurator Fiscal Service, Sentencing Council, Scottish Sentencing Council

⁶ <https://www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/Datasets/DatasetsCrimProc>

38. There may be some one-off costs associated with the preparation of new training or guidance material for HMCTS, SCTS and the Crown Prosecution Service (CPS)/Crown Office and Procurator Fiscal Service(COPFS). As these measures will lead to changes to maximum penalties, they will also impact on the Sentencing Council and the Scottish Sentencing Council, who are responsible for creating and updating sentencing guidelines. We have not quantified this activity due to the anticipated costs being low and a lack of published data on the costs associated with preparation of materials.

Benefits of Measure A

Monetised Benefits

National Probation Service

39. There are total savings of approximately £0.2m in probation costs, due to a reduction in the number of offenders released on licence during the 10-year appraisal period, compared to the counterfactual. These benefits begin in 2028/29.

Non-monetised Benefits

Victims of Road Traffic Accidents & their Families, the Public

40. Increasing the maximum penalty for this offence may contribute to providing justice for victims and their families and increased levels of public confidence in the justice system. Longer sentences could act as a deterrent, though evidence for the deterrent effect of longer sentences is weak.⁷

Measure B: Increase the maximum penalty for the offence of causing death by careless driving when under the influence of drink or drugs to life imprisonment (currently 14 years)

Costs of Measure B

Monetised Costs

HM Prison Service, Scottish Prison Service

41. The methodology used to calculate the effect of measure B is the same as the one used to calculate the impact of measure A. There were no sentences for this offence above the threshold in England and Wales in 2019 and thus we assume a negligible impact on sentencing from an increased maximum threshold. There were no sentences for this offence above the threshold in Scotland in 2019 and thus we assume a negligible impact on sentencing.

Non-monetised Costs

42. These have been assumed to be the same as the non-monetised costs for measure A.

Benefits of Measure B

Monetised Benefits

43. There were no sentences above the threshold in 2019, hence the benefits are negligible.

Non-monetised Benefits

44. These have been assumed to be the same as the non-monetised benefits for measure A.

⁷ <https://nij.ojp.gov/topics/articles/five-things-about-deterrence>

Measure C: Create a new offence of causing serious injury by careless driving (maximum sentence 2 years imprisonment)

Costs of Measure C

45. The key estimated impacts can be seen in tables 1 to 3.

Table 1: Offence outcomes under counterfactual and policy in England and Wales per annum⁸

	Careless driving charge (counterfactual)	Causing serious injury by careless driving charge (policy)	Difference
Proceeded against	1150	1150	0
Sent to trial in Crown Court	0	950	950
Convicted	1000	1150	150
Sentenced	1000	1150	150
Absolute Discharge	<5	0	<-5
Conditional Discharge	<5	15	10
Fine	950	50	-900
Total Community Sentence	5	350	350
Suspended Sentence	0	350	350
Total Immediate Custody	0	400	400
Compensation (primary disposal)	<5	0	-
Total Otherwise Dealt With	5	0	-5
Average Custodial Sentence Length	n/a	5.6	

Table 2: Affected cases' court type under counterfactual and policy in Scotland per annum⁹

	High court	Sheriff solemn	Sheriff summary	Justice of the Peace	Total
Careless driving charge	0	5	65	100	170
Causing serious injury by careless driving charge	20	100	35	-	155
Difference	20	95	-30	-100	-15

Table 3: Disposals under counterfactual and policy in Scotland per annum¹⁰

	Custody	Community sentence	Monetary	Other	Total
Careless driving charge	0	5	140	5	150
Causing serious injury by careless driving charge	15	80	20	5	120
Difference	15	75	-120	0	-30

Monetised Costs

HMCTS, Legal Aid Agency, Scottish Courts and Tribunals Service, Scottish Legal Aid Board

⁸ MoJ internal analysis

⁹ MoJ internal analysis

¹⁰ MoJ internal analysis

46. These costs are largely a consequence of the new offence being triable either way, leading to indictments and the higher costs in the Crown Court and Scottish equivalent courts. The total costs to HMCTS and the LAA are estimated to be £2.8m and £0.7m per annum, as a result of an estimated 750 additional cases being transferred to the Crown Court in England and Wales.
47. Costs to the SCTS and SLAB are estimated to be £0.6m and £0.5m per annum as a result of 20 cases transferred to be heard at the High Court and 100 cases heard by the Sheriff solemn.

HM Prison Service, Scottish Prison Service

48. In England and Wales, the estimated steady state running costs of £4.3m will be reached in 2022/2023 and result in an increase in the prison population by around 80 places due to offenders serving custody. The estimated prison construction costs of £19.3m will be required in year 1, due to the offence carrying a custodial sentence.
49. In Scotland, the estimated steady state running costs of £0.2m will be reached in 2022/2023 and result in fewer than 5 additional places due to offenders serving custody. Due to the small increase in the population, no prison construction is associated with this policy in Scotland.

National Probation Service

50. There will be steady state costs of around £1.4m to the probation service due to prisoners being released and spending longer on licence. These costs are expected to reach steady state in 2023/24. Given the low volume of cases, the impacts on the probation service in Scotland are considered negligible.

Non-monetised costs

Criminal Justice Social Work, National Probation Service, Electronic Monitoring Service

51. There will be costs to the CJSW arising from offenders, who would not previously have received custodial sentences, being sentenced to custody and serving 50% of their sentence on licence in the community and any additional time on post sentence supervision (to make total time on supervision at least 12 months). These costs have not been monetised due to the low expected numbers.
52. There will also be costs to the NPS, CJSW and Electronic Monitoring Service resulting from offenders receiving community sentences who would not have done so, as previously they could only be prosecuted for careless driving which has a maximum penalty of a fine. It was not possible to monetise this impact as the type and length of community order that may be received is unknown.

HM Courts & Tribunals Service, Scottish Courts and Tribunals Service, Sentencing Council, Scottish Sentencing Council

53. There might be some one-off transitional costs for HMCTS, SCTS, Sentencing Council and Scottish Sentencing Council associated with the preparation of new training or guidance material. However, we are unable to realistically quantify these transitional costs because of a lack of cost data. We anticipate that any costs will be relatively low.

Crown Prosecution Service

54. There may be increased costs to the CPS due to a higher number of cases being tried in Crown Courts, given the longer duration of trials in these courts. These costs were unable to be monetised due to a lack of unit cost data. However, we expect costs to be low since the overall caseload doesn't increase significantly over the appraisal period.

HM Treasury

55. There could be reduced revenues to HMT from fines, however any impact is expected to be minimal.

Offenders and their Families

56. Offenders who receive a more punitive disposal where they would have received a fine previously, could face a greater chance of unemployment, loss of housing, negative effects on relationships or mental health. These effects could pose a cost to other areas of government by increasing demand for public goods and services such as unemployment benefits or social housing. We are unable to realistically quantify these costs as it is unclear how incarceration might affect offenders' subsequent consumption of public goods and services.

Benefits of Measure C

Monetised benefits

57. It has not been possible to monetise the benefits from measure C due to the difficulty in quantifying the benefits outlined in paragraphs 50 to 52.

Non-monetised benefits

58. Measure C would, for the first time, introduce the possibility of a custodial sentence for drivers who caused serious injury while driving carelessly and will close a perceived gap in the law.

59. Creating a specific offence for causing serious injury by careless driving could contribute to providing better justice for victims and their families and increase levels of public confidence in the justice system.

60. There may be possible benefits to CJS agencies and society through reduction in driving offences from deterrence and possible short-term reductions in driving offences due to incarceration of offenders. However, the evidence of the existence and scale of deterrent and incarceration effects is weak¹¹. As a result, we have not quantified this.

Overall Impact of Option 1

61. The combined prison construction costs for measures A-C are estimated to be between £22.3m and £25.0m. The annual steady state costs to HM Prison Service are estimated to be between £4.9m and £5.7m. This is largely driven by an additional 80 prison places per annum due to measure C. Annual costs to Scottish Prison Service are an estimated £0.2m in the steady state. Likewise, annual costs to the National Probation Service are an estimated £1.4m due to prisoners released on licence in measure C.

62. The combined impacts of all three measures on HMCTS and LAA are around £3m and £0.7m per annum. Similarly, the impacts on SCTS and SLAB are around £0.6m and £0.5m per annum. Court and legal aid costs are driven by the new offence in measure C being triable either way.

63. In tables 5 and 6 (below), we summarise these combined impacts for England and Wales and Scotland, respectively:

Table 4: Combined impacts of measure A, B and C for England and Wales, at steady state, and one-off construction costs

	HMCTS	LAA	HM Prison Service	National Probation Service	Total (Steady State Costs)	Construction Costs
Measure A	<i>de minimis</i>	<i>de minimis</i>	£0.7m to £1.5m	£0.1m (saving)	£0.6m to £1.3m	£3.0m to £5.7m

¹¹ Source: <https://nij.ojp.gov/topics/articles/five-things-about-deterrence>

Measure B	<i>de minimis</i>	<i>de minimis</i>	<i>de minimis</i>	<i>de minimis</i>	<i>de minimis</i>	<i>Nil</i>
Measure C	£3.0m	£0.7m	£4.3m	£1.4m	£9.4m	£19.3m
Total	£3.0m	£0.7m	£4.9m to £5.7m	£1.4m	£10.0m to £10.7m	£22.3m to £25.0m

Table 5: Combined impacts of measure A, B and C for Scotland, at steady state

	SCTS	SLAB	Scottish Prison Service Running Costs	Total (Steady State Costs per annum)
Measure A	<i>de minimis</i>	<i>de minimis</i>	<i>de minimis</i>	<i>de minimis</i>
Measure B	<i>de minimis</i>	<i>de minimis</i>	<i>de minimis</i>	<i>de minimis</i>
Measure C	£0.6m	£0.5m	£0.2m	£1.3m
Total	£0.6m	£0.5m	£0.2m	£1.3m

F. Assumptions & Risks

64. The analysis in this IA is based on several assumptions and each has an associated risk. The main assumptions and risks are set out in table 6.

Table 6: Main Assumptions and Risks

Assumptions	Risks
Annual average of 2015-2019 MoJ Criminal Justice Statistics data for England and Wales are used to identify the volumes, disposals and the sentence lengths of individuals proceeded against in England and Wales.	Every effort has been made to ensure that the figures presented are accurate and complete. However, it is important to note that this data has been extracted from large administrative data systems generated by courts. Consequently, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used ¹² .
Criminal Proceedings in Scotland, 2015-16 to 2018-19, are used to identify the volumes, disposals and the sentence lengths of individuals proceeded against, based on an annual average.	Scottish Criminal proceedings statistics are based on data from the Criminal History System (CHS), an administrative system used to track individuals through the CJS and, as such, was not designed purely for statistical purposes. Actions and processes have been put in place to ensure that Scottish Government statisticians understand and use the data accurately, but users should be aware of limitations of the statistics.
Future volumes are based on 2015-2019 annual average volumes for England and Wales and the average of 2015-16 to 2018-19 volumes for Scotland.	Volumes may deviate from either 2015-2019 (in England and Wales) or the 3-year average of 2015-16 to 2018-19 (in Scotland) in the future, which will impact on the costs and benefits outlined in the body of the IA (could be higher or lower in reality).

¹² For further caveats relating to the statistics used please view the notes tab in at the following link: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2018>

<p>Annual running costs for prison places are taken from the most recent prices published by HMPPS for 2019/20 inflated to represent the current price in 2020/21¹³.</p> <p>The prison cost per place for Scotland used in calculations is £43,003 (20-21 prices), from the <i>Costs of the Criminal Justice System in Scotland</i>¹⁴</p> <p>It is assumed that the new estate will not be crowded.</p>	<p>Whether or not Option 1 requires additional prisons to be opened depends on what other policies and external factors have an impact on prison places simultaneously. If the additional caseload could be accommodated in existing estate then they may incur smaller, marginal running costs. This includes whether there is sufficient maintenance funding for the existing estate to reduce the likelihood of losing places through deterioration.</p> <p>Running costs may be higher or lower depending on the specific estate required to accommodate the additional caseload.</p> <p>The cost per place in Scotland is the latest published figure available (adjusted to 20/21 prices) and actual costs could be higher now.</p>
<p>New capacity can be provided in numerous ways, so construction costs are based on the cost per place of a combination of provisions including new builds and refurbishments and is based on the nominal costs of each project, using a modelled profile of build.</p>	<p>Construction figures may change in the future, meaning costs could change. Costs will vary depending on the type of prison being built and whether any could be accommodated in existing capacity.</p>
<p>We have assumed the Scottish prison estate can accommodate the low volumes estimated in this IA.</p>	<p>The estimated increase in prison population in Scotland is small (less than 5), as such prison construction costs in Scotland have not been quantified. If additional estate was needed to accommodate this increased population then construction costs would be incurred.</p>
<p>The progression of cases through the courts (split between different court types, rates of conviction, and sentencing breakdowns) are assumed to be the same as death by careless driving for the new offence in measure C.</p>	<p>Differences in any of these attributes could influence costs of the new offence across all affected groups.</p>
<p>It has been assumed that all offenders given standard determinate sentences are released from custody at 50% of sentence to serve the remainder of their sentence on licence, except those serving 7 years or more in England and Wales for measures A and B, where it is assumed they will be released after serving two thirds of their sentence.</p>	<p>If offenders serve a different proportion of their sentence in prison, then prison costs may be higher or lower than estimated (with extra time in prison resulting in less time on licence).</p>
<p>For measures A and B, it has been assumed that only those who receive a custodial sentence of at least 9 years 4 months will receive a longer sentence. This is based on the vast majority of sentences being concentrated at the lower end of the sentencing outcomes available under the current maximum and we assume only the few cases at the higher end to receive harsher sentences.</p>	<p>Different sentencing outcomes will impact on total costs and benefits.</p>

¹³ Ministry of Justice, Prison performance statistics 2017 to 2018. <https://www.gov.uk/government/statistics/prison-performance-statistics-2017-to-2018>

¹⁴ <https://www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/Publications/costcrimjustscot/costcrimjustdataset>

For measures A and B, we have modelled ranges to illustrate different possibilities in terms of the additional length of sentence for those in scope (25%, 37.5% or 50% longer sentences, depending on scenario).	Different sentencing outcomes will impact on total costs and benefits. It is possible that some life sentences will be imposed where they were not previously, which would have large impacts on a case by case basis.
For measure C, we assume that offenders proceeded against for the new offence in England and Wales, and Scotland will come from the pool of offenders currently proceeded against for the general careless driving offence.	Costs might be higher than estimated if new cases that would have not been prosecuted at present enter the CJS.
For measure C, we assume the volume of proceedings for the proposed offence will have the same ratio to the volume of proceedings for careless driving as the ratio that exists between the offences of serious injury by dangerous driving and dangerous driving.	It is uncertain whether careless driving and serious injury by careless driving will demonstrate the same relationship as that seen for dangerous driving and serious injury by dangerous driving. Volumes could fluctuate in the future, which would impact on costs.
For measure C we assume an estimated ACSL of 5.6 months in England and 7 months in Scotland. We base this on the ACSL for the more seriousness offence of death by careless driving and adjust it based on relative harm. To do this we assume that the ratio between that of serious injury by careless driving and death by careless driving will be the same as the ratio between serious injury by dangerous driving and death by dangerous driving.	Any differences in ACSL could lead to higher or lower costs.
In England and Wales, costs per court sitting day are taken as comprising staff and judicial costs and amount to £1,100 and £1,900 (2019-20 prices) in the magistrates' courts and the Crown Court respectively. We assume average hours per sitting day of 5 hours and 4.5 hours in magistrates' courts and the Crown Court, respectively.	It should also be noted that court costs are to an extent an opportunity cost in that the courts are largely running anyway with a backlog of cases.
In England and Wales, court timeliness figures are taken from TAR Report 2012 in magistrates' courts and from the Criminal Court Statistics publication's Crown Court Statistics by offence group ¹⁵ .	Differences in the number of sitting hours dedicated to cases would lead to variation in the impacts to HMCTS.
In Scotland, court costs are split down simply by type of court and are taken from <i>Costs of the Criminal Justice System in Scotland</i> ¹⁶ (and inflated from 2015-16 to 2020-21 prices).	These costs are from 2015-16 and thus somewhat out of date (although the latest available).
In England and Wales, legal aid fees by fee type in the Crown Court and averages in the magistrates' courts are based on data collected for 2017-18 ¹⁷ . We assume 50% eligibility in the magistrates' courts and 100% in the Crown Court.	Variation in the proportion of cases receiving legal aid would affect impacts on the LAA. If litigators or advocates were to charge under different fee categories impacts would vary.

¹⁵ <https://www.gov.uk/government/statistics/criminal-court-statistics-annual-january-to-march-2018>

¹⁶ <https://www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/Publications/costcrimjustscot/costcrimjustdataset>

¹⁷ <https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-october-to-december-2018>

It is assumed that the proposed offence would be charged under <i>category H – miscellaneous offences</i> .	
<p>In Scotland, legal aid fees in each court are based on those found in <i>Costs of the Criminal Justice System in Scotland</i>¹⁸.</p> <p>We assume 100% eligibility for legal aid.</p>	<p>These costs are from 2015-16 so somewhat out of date (but the latest available).</p> <p>Using averages for courts presents risks in that fees would likely vary based on the cases.</p> <p>Assuming 100% eligibility could lead to overestimation of costs to the Scottish Legal Aid Board.</p>

G. Wider Impacts

Better Regulation

65. These proposals are exempt from the Small Business Enterprise and Employment Act 2015 and do not count towards the department's Business Impact Target.

Direct Costs and Benefits to Business

66. There are no direct costs or benefits to business.

Small and Medium Enterprises

67. The policy proposals present no burdens on small and medium enterprises.

Equalities Impact Assessment

68. Equalities issues have been considered during the development of the policy options outlined above and an Equalities Impact Assessment has been undertaken in conjunction with this Impact Assessment.

Environmental Impact Assessment

69. No environmental impacts have been identified.

Family Impact Test

70. There is no significant impact on families.

International Trade

71. There is no significant impact on international trade.

H. Monitoring & Evaluation

72. The policy will be reviewed in the normal way for post legislative scrutiny.

¹⁸ <https://www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/Publications/costcrimjustscot/costcrimjustdataset>

Annex A

Table A provides the offences and penalties set out in the Road Traffic Act 1988 and Road Traffic Offenders Act 1988 respectively.

Table A: Road traffic offences and penalties

Provision	Offence	Mode of trial	Max. Penalty
Road Traffic Act 1988 (RTA) section 1	Causing death by dangerous driving.	On indictment.	14 years' imprisonment.
RTA section 3A	Causing death by careless driving when under influence of drink or drugs.	On indictment.	14 years' imprisonment or a fine or both.
RTA section 3ZC	Causing death by driving: disqualified drivers.	On indictment.	10 years' imprisonment or a fine or both.
RTA section 2B	Causing death by careless or inconsiderate driving.	(a) Summarily. (b) On indictment.	(a) 12 months' imprisonment* (in England and Wales) or 6 months (in Scotland) or the statutory maximum fine or both. (b) 5 years' imprisonment or a fine or both.
RTA section 1A	Causing serious injury by dangerous driving.	(a) Summarily. (b) On indictment.	(a) 12 months' imprisonment* or the statutory maximum fine or both. (b) 5 years' imprisonment or a fine or both.
RTA section 3ZD	Causing serious injury by driving: disqualified drivers.	(a) Summarily. (b) On indictment.	(a) On conviction in England and Wales: 12 months' imprisonment* or a fine or both. On conviction in Scotland: 12 months or the statutory maximum fine or both. (b) 4 years' imprisonment or a fine or both.
RTA section 3ZB	Causing death by driving: unlicensed or uninsured drivers.	(a) Summarily. (b) On indictment.	(a) 12 months' imprisonment* (in England and Wales) or 6 months (in Scotland) or the statutory maximum fine or both. (b) 2 years' imprisonment or a fine or both.
RTA section 2	Dangerous Driving	(a) Summarily. (b) On indictment.	(a) 6 months' imprisonment or the statutory maximum fine or both. (b) 2 years' imprisonment or a fine or both.

RTA section 4(1)	Driving or attempting to drive when unfit to drive through drink or drugs.	Summarily.	6 months' imprisonment or level 5 fine on the standard scale or both.
RTA section 103(1)(b)	Driving while disqualified.	(a) Summarily, in England and Wales. (b) Summarily, in Scotland. (c) On indictment, in Scotland.	(a) 6 months' imprisonment or level 5 fine on the standard scale or both. (b) 6 months' imprisonment or the statutory maximum fine or both. (c) 12 months' imprisonment or a fine or both.
RTA section 3	Careless, and inconsiderate driving.	Summarily.	Level 5 fine on the standard scale.

* In relation to an offence committed before the commencement of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020, the reference to 12 months is to be read as a reference to 6 months'